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MESSAGE FROM THE  
OMBUDSMAN

SIDEBAR:

- The Ombudsman for Public Access is Staff Attorney Danee Garone.
- Open meeting law and public records law materials and updates are [available on our website](#).
- [Click here](#) to view our updated open meeting law booklet.
- [Click here](#) to view our updated public records law booklet.
- Review past [Public Access Newsletters](#)
- [Upcoming Training/ Outreach](#) -
- December 5 at 10:00 AM — Town of Clarkdale
- December 18 at ~9:30 AM — Maricopa County Workforce Development Board Meeting
- Contact Danee Garone for more information.

# The Public Record

State Ombudsman Dennis Wells

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## The Open Meeting Law: Committees and Subcommittees

The following scenario is commonly presented to our office: Four members of a nine-member public body have been selected to meet or conduct a work session and report back to the nine-member public body. Is the four person meeting/work session subject to the open meeting law even though it is less than a quorum of the nine members? Likely, yes.

The open meeting law states that “[a]ll meetings” of a public body are subject to the open meeting law. A.R.S. § 38-431.01(A).

“Meeting” is defined as “the gathering, in person or through technological . . . of a quorum of the members of a public body” to essentially discuss anything that can foreseeably come before the public body for action. A.R.S. § 38-431(4)(a).

“Public body” is defined to include “all standing, special or advisory committees or subcommittees of, or appointed by, the public body.” A.R.S. § 38-431(6). Lastly, “ ‘Advisory committee’ or ‘subcommittee’ means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation . . . ” A.R.S. § 38-431(1).

The takeaway is this: The open meeting law applies to meetings of public bodies. Committees and subcommittees are public bodies. So, any time a public body or its presiding officer designates several individuals to get together to consider something

and report back to the public body, it has created a committee or subcommittee subject to the open meeting law and all of its requirements, including providing notice, creating an agenda, creating minutes, meeting in public, etc.

Let us return to our initial scenario. If the nine-member public body collectively decides or its presiding officer decides to select four of its members to get together to discuss an issue and report back to the nine-member public body, that four person group, regardless of what it is labeled, is a public body subject to the open meeting law. Any time a quorum of the four members gathers to discuss business, it must comply with the open meeting law.

## Public Records Request Forms/Methods

Can a government agency mandate that someone seeking public records submit their request in a particular manner and/or using a particular form? Probably not.

The public records law does not directly address the form or method by which someone may request public records, and neither have the Arizona courts.

Public records are “presumed open to the public for inspection as public records.” *Carlson v. Pima Cty.*, 141 Ariz. 487, 491 (1984). The public records law does *not* empower an agency to restrict access to records, unless the records are made confidential by law or a specific privacy or state interest outweighs the collective public interest in the records.

The public records law does not empower agencies or officials to create rules or policies for how the public must communicate a desire to inspect records. Similarly, it does *not* provide authority for agencies or officials to restrict this broad access to records to those who request records in the agency’s preferred manner or with its preferred forms.

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## Non-Profit Organizations and Public Access Laws

Are non-profit organizations subject to the open meeting and public records law? Usually no, but if government controls or is significantly and directly involved in the operation of a nonprofit entity, it can be.

Our office regularly receives this inquiry, particularly about “501(c)(3) non-profits.” Certain nonprofit organizations are exempt from certain federal taxes pursuant to 26 U.S.C. §501(c), such as corporations “organized and operated exclusively for religious [or] charitable . . . purposes.” Are these and similar entities subject to the open meeting and public records law?

The public records law applies to “officers,” which “means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.” A.R.S. §39-121.01(A)(1). “Public body” is essentially defined as an Arizona government entity or “any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.” A.R.S. §39-121.01(A)(2). The open meeting law applies to public bodies, which are essentially defined as a multi-member, governmental (or quasi-governmental) decision-making entities. A.R.S. §38-431(6).

Private entities (regardless of whether for profit) are *not* subject to the public records or open meeting law. There are, however, certain entities that straddle the line between governmental and private. The Arizona Attorney General has said that the open meeting law (and perhaps the public records law) may apply to entities that are not clearly and traditionally governmental but, nevertheless, have close ties with or significant involvement from government entities. Arizona Attorney General Agency Handbook 7.3.3. For instance, if a government agency or official has direct control over an entity, appoints the entity’s leaders, and/or directly funds an entity, it may be subject to the public records or open meeting law.

So, for a typical private non-profit organization (including most common 503(c) organizations) which is *not* controlled or directly funded by government, the public records law and open meeting law likely do *not* apply.

## Arizona Ombudsman – Citizens’ Aide



### Greetings!

In our summer/fall newsletter, we address the open meeting law and committees/subcommittees, whether an agency can require public records requests be made in a certain way, and whether non-profit organizations are subject to public access laws.

As always, our goal is to provide you with timely and informative information related to Arizona’s Public Record and Open Meeting Laws. If you have suggestions and ideas for an upcoming newsletter, or questions you want answered, please feel free to contact our office. Public records law and open meeting law training is also available upon request.

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